



STATE OF CONNECTICUT
OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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**Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before the Judiciary Committee**

Presented by: James D. McGaughey
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Good morning and thank you for this opportunity to support **Raised Bill No. 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent Is Substantially Impaired.**

This bill amends those sections of the Criminal Code that describe the crimes of second and fourth degree sexual assault by deleting the offensive term, "mentally defective"; and by elaborating on the definition of the term "physically helpless".

Recognition that this legislation is needed crystallized following an Appellate Court decision two years ago that overturned the conviction of a man who had been found guilty of Second Degree Sexual Assault of his girlfriend's daughter. In addition to having mild intellectual disability, that young woman has very substantial physical disabilities which render communication, or any movement, quite difficult for her. Our Office was called to investigate this matter, and our staff investigator testified at the trial. We also ensured that police authorities were involved at the start of the investigation, as it was apparent that a crime had been committed. The woman testified at the trial using a message board, and an elaborate system of closed circuit TV cameras and monitors was installed in the courtroom so that jurors could directly view her responses to questions – responses which were slow, but clear. Although she could testify for only 15 minutes at a time before becoming too fatigued to continue, and her testimony had to be spread over five days, she never wavered in her description of what had happened to her or her determination to testify about it.

The Appellate Court's decision overturning the jury's verdict occasioned considerable concern within the disability community in Connecticut, as did last year's Supreme Court ruling which upheld it. Much of the rationale for those decisions rested on what the Court found to be insufficient evidence that the victim was "physically helpless" as that term is currently defined in the statute. This bill will expand that statutory definition to include a victim who is either unconscious or, "for any other reason, is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact." (Lines 122-125.) In an unrelated improvement, the bill will also remove the term "mentally defective" from both the definitions section and the listing of victim characteristics that trigger the crimes of second and fourth degree sexual assault, replacing it with the more precise and much less offensive term, "mental disability or disease". These recommended changes reflect a consensus reached between State's Attorneys, State human service agencies, and advocacy groups for people with disabilities and victims of sexual assault.

This bill is about more than adopting politically correct language. People with disabilities have a major stake in the effectiveness of the protections afforded under our criminal law. Recent data from the Bureau of Justice Statistics shows that a person with a disability is twice as likely to be sexually assaulted as someone who does not have a disability. Indeed, since our Office has been involved in efforts to address the problems that surfaced in the case referred to above, I have been approached by a number of people who have long been active in the disability rights movement – people whom I have known for years – who have shared with me, confidentially, that they, too, have been victims of sexual assault. Our Office's own experience investigating abuse of people with intellectual disability bears this out. A year does not go by without at least several instances where a van driver, a paid care giver or, even a member of the victim's own family is found to have sexually assaulted an individual with an intellectual disability.

Given how pervasive this problem is, it may be tempting to enact provisions that would dramatically change the statutory elements regarding communicating lack of consent. However, we need to be careful not to create any statutory presumptions to the effect that people with significant disabilities are categorically incapable of engaging in truly consensual sexual relations. The bill before you creates no such presumption, and will go a long way toward ensuring just results for victims with disabilities. Its language has been vetted by the various groups and agencies that have an interest. I urge you to act favorably on it.

Thank you for your interest. If you have any questions I will try to answer them.